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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------|
| 10/758,823 | 01/16/2004 | Martin Brice | 3647 | 6575 |
| 22474 | 7590 | 08/22/2005 | | |
| DOUGHERTY, CLEMENTS, HOFER, BERNARD & WALKER 1901 ROXBOROUGH ROAD SUITE 300 CHARLOTTE, NC 28211 | | | EXAMINER COCKS, JOSIAH C | |
| | | | ART UNIT 3749 | PAPER NUMBER |

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|--------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/758,823 | BRICE ET AL. | |
| | Examiner | Art Unit | |
| | Josiah Cocks | 3749 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 May 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-31 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 5/11/2005 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,919,084 to Maurice ("Maurice '084") in view of U.S. Patent No. 4,128,393 to Sneed ("Sneed").

Maurice '084 discloses in Figures 1-9 an invention similar to that described in applicant's claims 1-31. In particular, Maurice '084 shows a brooder (100) with reflector (132), ceramic heating element (110), burner (116), and pilot light/burner assembly (see Fig. 1). The pilot light includes a perforated deflector (22) with cap (48) that directs flames to a thermocouple assembly with thermocouple (24).

Maurice '084 does not disclose a windshield that provides a protected zone against high velocity air for both the pilot flame and the thermocouple.

Sneed teaches a gas burner assembly that is analogous to the pilot burner assembly of Maurice '084. In Sneed, a gas burner (3) and thermocouple (2) are protected from air-flow by a perforated shield (5) having a shell-like shape. The shield may vary in size and shape depending upon such factors as the size of the pilot assembly (see col. 2, lines 34-39) and functions to a protected air within its confines that encompasses the flame and thermocouple (see col. 2, line 65 through col. 3 line 15). The examiner considers the illustrations of the shield of Sneed and the teachings that size and shape may vary suggest to a person of ordinary skill in the art applicant's claimed "tubular chamber" to protect the pilot light and thermocouple from the wind.

Therefore, in regard to claims 1-31, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the pilot burner assembly of Maurice '084 to incorporate the wind shield of Sneed as this wind shield desirably shield the flame from flame-out in all but the most extreme wind gust situations (see Sneed, col. 3, lines 16-18).

Response to Arguments

5. Applicant's arguments filed 5/11/2005 have been fully considered but they are not persuasive.

Applicant first argues that the windshield of Sneed would not function to protect the thermocouple. In response, the examiner notes that the shield of Sneed functions for the identical purpose of applicant's shield. The shield (5) of Sneed is shown as having edges that extend around the thermocouple (2) (see Fig. 1). Further, the shield is described as functioning to deflect gusts or drafts from the flame area (see col. 1, lines 31-32). A person of ordinary skill in the art would recognize that the thermocouple (2) functions to monitor the temperature of the flame produced at the pilot light and would be within the "flame area" to accomplish this purpose. Therefore, the examiner considers that the shield (5) of Sneed is properly considered to be protecting the thermocouple.

Applicant also argues that the shield does not provide a tubular chamber as claimed. During patent examination, the USPTO applies to claim verbiage the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The examiner notes that the shield of Sneed is described as being variable in size and shape (see col. 2, lines 34-39) and is specifically described as to have edges that extend outwardly to form a concave wall above and on three sides of the flame (see col. 2, lines 30-33). The examiner considers given its broadest reasonable interpretation, the phrase "tubular chamber" would not suggest to a person of

ordinary skill in the art to require all four sides enclosed and would consider the protective area or chamber formed by the shell of Sneed to be properly considered a tubular chamber.

Applicant further argues that the shell-like shape windshield of Sneed would not be physically capable of being incorporated in the broader assembly of Maurice '084. In response, the examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the examiner considers that a the windshield of Sneed that functions to protect a pilot light and thermocouple from wind in a burner assembly would suggest to a person of ordinary skill in the art that such wind protection would also be desirable in similar burner assembly, such as the broader of Maurice '084, for the same function of protecting the pilot light and thermocouple from the wind.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
August 16, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749